

**THE AUTHORITY ON ADVANCE RULINGS  
IN KARNATAKA  
GOODS AND SERVICES TAX  
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD  
GANDHINAGAR, BENGALURU - 560009**

**Advance Ruling No. KAR ADRG 24/2019**

**Date : 12-09-2019**

Present:

1. Sri. Harish Dharnia,  
Additional Commissioner of Central Tax, . . . . Member (Central Tax)
2. Dr. Ravi Prasad M.P.  
Joint Commissioner of Commercial Taxes . . . . Member (State Tax)

1.	Name and address of the applicant	M/s Banyan Tree Advisors Private Ltd, Flat No. 2966, 4th Cross, 12th Main Road, Indiranagar, HAL, Bengaluru - 560008
2.	GSTIN or User ID	29AACCB4492Q1ZY
3.	Date of filing of Form GST ARA-01	19.03.2018
4.	Represented by	Sri Gururaja Sridhara, Chartered Accountant
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru
6.	Jurisdictional Authority - State	LGSTO-45, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- each under CGST Act and KGST Act vide CIN 18022329002655 dated 23.02.2018

**ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS & SERVICES  
TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS &  
SERVICES TAX ACT, 2017**

1. M/s Banyan Tree Advisors Private Limited, (called as the 'Applicant' hereinafter), Flat No. 2966, 4th Cross, 12th Main Road, Indiranagar, HAL, Bengaluru - 560008 , having GSTIN number 29AACCB4492Q1ZY, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



2. The Applicant is a Private Limited Company and are registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

*Whether they need to charge GST on the Portfolio Management Services provided to Non-resident client, where the client pays fee in foreign currency from their overseas account to the account of the Portfolio manager?*

3. The applicant furnishes some facts relevant to the stated activity:
- a. The applicant states that they are into the business of providing portfolio management services and portfolio advisory services, as defined by the SEBI regulations. They have received approval to practice the portfolio management business as defined by SEBI (Portfolio Managers) Regulation, 1993 on 1<sup>st</sup> June 2005.
  - b. The applicant submits that they, as a Portfolio Manager, are currently offering Discretionary Portfolio Management Services. The Portfolio Manager manages each portfolio individually, with a common approach to investing which focuses on capital protection and a reasonable rate of appreciation. The funds invested by the clients are managed by the Portfolio Manager. The funds are held in the name of the client in their bank and the Demat account is held with the local custodian bank and the Portfolio Manager has the Power of Attorney to manage the funds.
  - c. The Applicant, being a Portfolio Manager, provides services to Resident and Non-resident clients. For the Portfolio Management services, the Portfolio Manager charges a fee to its client.
  - d. The applicant states that Section 12 and 13 of the IGST Act provides various provisions to enable determination of place of supply in case supply of services. Section 12 provides for place of supply provisions when both supplier of service and the recipient are located in India (taxable territory) whereas, either of the supplier or recipient are located outside India, then the provisions are governed by Section 13 of the IGST Act.
  - e. The applicant further states that as per the default or principal rule of place of supply of cross border services, the location of

the recipient of service is the place of supply. However, in case the location of recipient of service is not available in the ordinary course of business, the place of supply shall be the location of the supplier of service [section 13(2) of the IGST Act]. In this case, the place of supply of the services provided by the Portfolio Manager to a non-resident client shall be the location of the recipient of services, that is outside India.

- f. The applicant states that the location of the service provider and the location of the service recipient is very important for determining the nature of a supply (i.e. inter-State or intra-State) and also for ascertaining the place of supply as the place of supply is preponderantly pegged to the location of the service recipient or the location of the service provider or the service recipient. The IGST Act defines the location of the recipient of service and the provider of service with a view to address such issues.

Location of the recipient of service has been defined as –

<b>Where. . .</b>	<b>Then. . .</b>
A supply is received at a place of business for which registration has been obtained	The location of such place of business
A supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment else where)	The location of such fixed establishment
A supply is received at more than one establishment, whether the place of business or fixed establishment	The location of the establishment most directly concerned with the receipt of the supply
In the absence of such places	The location of the usual place of residence of the recipient

In this case, the recipient of services is the location of the usual place of residence of the recipient, i.e. outside India.

- g. The applicant contends while concluding based on the provisions of section 13 of IGST Act that
- i. The place of supply of service: in case of services provided by the Portfolio Manager i.e. applicant to their Non-resident clients shall be outside of India



- ii. Also since the location of recipient of services is outside India and the Non-resident clients are paying the portfolio management fees in foreign currency in convertible foreign exchange from their overseas account to the account of the Portfolio Manager, the place of supply of service is outside India.

The above is subject to providing services under bond or Letter of Undertaking and subject to such conditions, safeguards and procedure as prescribed in notification no. 37/ 2017 and circular 8/2017 in this regard, without payment of IGST.

#### **PERSONAL HEARING / PROCEEDINGS HELD ON 03.04.2018.**

4. Sri Gururaj, Chartered Accountant and duly authorised representative of the applicant appeared for personal hearing proceedings held on 03.04.2018 & reiterated the facts narrated in their application.

#### 5. FINDINGS & DISCUSSION:

5.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri Gururaj, Chartered Accountant and duly authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

5.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

5.3 The applicant seeks advance ruling on the question that whether the Portfolio Management services being provided by them to the non-resident Indian clients are taxable to GST or not. Further they contend that in the instant case the place of supply is outside India and hence the supply amounts to export of service & consequently be "zero-rated".

5.4 At this juncture, we draw attention to Sub-section (6) of section 2 of the Integrated Goods and Services Tax Act, 2017 which defines "export of services" as under:

*"(6) export of services" means the supply of any service when,—*

- (i) the supplier of service is located in India;*
- (ii) the recipient of service is located outside India;*
- (iii) the place of supply of service is outside India;*
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and*
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;*

It is clearly evident from the above that the place of supply of the services must be outside India for the said services to be considered as "export of services". Therefore determination of place of supply is very crucial in the instant case so as to decide whether the provision of said services amount to export of services or not. Now, thus we proceed to examine whether the question on which the applicant sought advance ruling is admissible in terms of Section 97(2) of the CGST Act 2017 or not.

5.5 We draw attention to Sub-section (2) of Section 97 of the CGST Act 2017 which prescribes the issues on which advance rulings can be sought by the applicant. The said section reads as under:

*"(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—*

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term."*



The question raised by the applicant on which advance ruling has been sought for does not fall under any of the category of Section 97(2) of the CGST Act 2017. Further it is an admitted fact that the applicant's question is related to place of supply and hence it is not a matter on which this authority is empowered to give a ruling. Therefore the instant application is liable for rejection and hence we do not intend to get into the merits of the case.

6. In view of the foregoing, we pass the following

**R U L I N G**

*The question on which the applicant has sought an advance ruling is not a matter on which the Authority for Advance Ruling is empowered to give an advance ruling and hence the application is hereby rejected.*

  
12.9.2019

**(Harish Dharnia)**  
**Member**



**(Dr. Ravi Prasad M.P.)**  
**Member**

Place : Bengaluru,

Date : 12-09-2019

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Principal Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru.

The Asst. Commissioner, LGSTO-45, Bengaluru.

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Banyan Tree

